IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9259 of 2003
with
SPECIAL CIVIL APPLICATION No 8744 of 1997
with
SPECIAL CIVIL APPLICATION No 12224 of 2003
with
SPECIAL CIVIL APPLICATION No 12227 of 2003
with
SPECIAL CIVIL APPLICATION No 12231 of 2003
with
SPECIAL CIVIL APPLICATION No 12234 of 2003
with
SPECIAL CIVIL APPLICATION No 12237 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEVRAJ RAMDHAWAN SINCE DECD.THRO HIS HEIR & L.R.
Versus
ROHIT MILLS LTD

Appearance:
1. Special Civil Application No. 9259 of 2003
MS SONAL D VYAS for Petitioner No. 1-1/1
DELETED for Petitioner No. 2-6

RULE SERVED for Respondent No. 1,2
MR MANISH R BHATT for Respondent No. 2
MR DS VASAVADA for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 13/05/2005

COMMON CAV JUDGEMENT

#. In this group of petitions, since the common question of law and facts are involved and with the consent of the parties, the matters are being disposed of by this common order.

#. In these petitions under Article 226 and 227 of the Constitution of India, the petitioners have prayed for appropriate writ, order or direction quashing and setting aside the judgments and orders passed by Industrial Court, Ahmedabad in Appeal Nos.52 of 2002 to 73 of 2002 at Annexure `E' in the compilation and a further prayer is made to direct respondent nos.1 and 2 to reinstate the petitioners with full back wages, continuity of service and other consequential reliefs.

#. It appears from the record that respondent no.1 mill was declared as sick unit by the Board of Industrial Finance & Reconstruction, New Delhi (hereinafter referred to as `BIFR' for short) and as per the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as `SICA' for short), a scheme was sanctioned for the revival of respondent no.1 mill. In the said sanctioned scheme, amalgamation of respondent no.1 mill with the respondent no.2 mill was provided for as per the provisions of `SICA' and the provision was made for retrenchment of 659 permanent employees and 301 badli employees. It appears from the record that it was also mentioned in the said scheme that respondent no.3 Union had entered into agreements dated 27.7.1990 and 4.11.1995 with regard to the retrenchment of workmen. It appears from the record that as and when respondent no.1 mill was amalgamated with respondent no.2 mill, some of the workers had raised objections as per the provisions of `SICA' to the `BIFR' when the scheme was a draft scheme and it was not sanctioned wherein it was stated that the agreements entered into by respondent no.3 union clearly indicated that the voluntarily resignations were to be obtained from the workers. It was also stated in the said objection that respondent no.3 union had acted

contrary to the interest of the workmen and respondent no.3 Union had given a device to the respondent mills to circumvent the provisions of the Industrial Disputes Act which provided for the protection of the workmen against the action of the mill regarding retrenchment of the workmen. It was also stated in the said objection that no provision can be made in the sanctioned scheme for retrenching the workmen on the basis of these agreements which are ex facie contrary to the provisions of I.D.Act and contrary to the interest of the workmen. It also appears from the record that in spite of the objections lodged before the BIFR, the objections were not considered by the BIFR and the scheme for amalgamation of the respondent no.1 mill with the respondent no.2 mill was sanctioned with a provision of retrenchment of 659 permanent workmen and 301 badli workmen of the respondent no.1 mill. It appears that some of the workmen of the respondent no.1 mill had also represented to the respondent no.3 union that the course adopted by the Union was contrary to the interest of the workmen and for entering the agreement dated 4.11.1995 and other similar issues. It appears that being aggrieved and dissatisfied by the scheme sanctioned by the BIFR providing for retrenchment of 659 permanent workmen and 301 badli workmen, the workmen preferred an appeal being Appeal No.94 of 1997 under Section 25 of the SICA before the Appellate Authority for Industrial Finance and Reconstruction (for short `AAIFR') which was rejected by order dated 25.7.1997. It also appears from the record that some of the workmen, including the petitioners, preferred T-Applications before the Labour Court, Ahmedabad contending that all the workmen were illegally retrenched from 1.11.1996 by the respondent no.1 mill and respondent no. 1 mill illegally stopped to allot the work to the workmen and ultimately, the Labour court was pleased to decide that the workmen had not obtained the consent from BIFR and, therefore, the applications were rejected on the preliminary ground of maintainability of jurisdiction. It also appears that the petitioners and other workmen challenged the order passed by the Labour Court at exh. 6 before the Industrial Court at Ahmedabad by way of appeal nos. 52 of 2002 to 73 of 2002 which were dismissed by a common order on the ground that without the consent of the BIFR under Section 22(1) of the SICA, no proceedings can be initiated against the sick company.

#. Ms.Sonal Vyas, learned advocate appearing on behalf of the petitioners, has submitted that once the scheme is sanctioned by the BIFR and implemented by the respondent no. 1 and 2, then the provisions of SICA will not be

applicable and, therefore, the consent of the BIFR as provided under Section 22 of SICA will not be required since respondent no. 1 mill has already been amalgamated with respondent no. 2 mill. She submitted that retrenchment of the petitioners workmen was contrary to the provisions of the Industrial Disputes Act and also the Bombay Industrial Relations Act, 1946. She further submitted that the action of the BIFR is in breach of the principles of natural justice since the BIFR has provided for retrenchment of the petitioners workmen without providing sufficient opportunity of being heard. It is, therefore, requested to allow the present petition.

#. In response to the notice of rule, Mr.Manish Bhatt appears for respondent nos. 1 and 2 and affidavit-in-reply is filed on behalf of respondent nos. 1 and 2. It is submitted that respondent no. 1 had made a reference to the BIFR under the provisions of the SICA which was numbered as Case No. 288 of 1988. It is submitted that after several hearings, a scheme under Section 16(1) was circulated before the BIFR and the preamble of the said scheme shows that respondent no. 1 was declared as Sick Industrial Company in terms of Section 3(1)(o). The scheme envisaged cost of rehabilitation at Rs.4745.55 lacs and apart from others, IDBI, ICICI and IRBI were the principals of the creditors. The scheme envisaged various sacrifices from secured, unsecured and statutory creditors as also from the workers. So far as workers are concerned, the scheme envisaged retrenchment of surplus work force of 521 workers (355 permanent and 170 badli workers) and 439 workers (308 permanent and 131 badli workers) and these retrenched workers in turn were entitled to receive their legal dues as provided under the scheme and accordingly, Rs.500 lacs was estimated in the rehabilitation scheme towards the payment to be made to such retrenched workers. The said scheme was considered by the BIFR in its meeting dated 08.10.1996, which was directed to be implemented forthwith. It is further submitted in para 5 of the affidavit-in-reply that the workmen had already been paid compensation as provided for in the sanctioned scheme and only about 71 workmen had not responded even though the company had already sent the compensation cheque as early as on 31.10.1996. It is further submitted that the scheme sanctioned by the BIFR has, by and large, been implemented. It is further submitted that in para 8 of the order, the AAIFR observed that the rehabilitation scheme sanctioned by the BIFR was evolved after considerable efforts and deliberations and this had enabled the sick company - respondent no. 1 to be rehabilitated from the route of merger which had enabled

the continued employment of about 500 workers and rightly the AAIFR has dismissed the appeal. It is further submitted that respondent no. 3 is a recognized union as per the BIR Act and has acted for the benefit and in the interest of the workers at large. It is further submitted that the settlement so arrived at is in the larger interest of the workers concerned and as per the provisions of the BIR Act, the settlement having been arrived at with the recognized union, the same is binding on all the concerned. It is submitted that the scheme sanctioned by the BIFR has worked to the satisfaction of the secured, unsecured, statutory creditors and even the workmen and in view of the express and in view of the language employed in Section 22 of SICA, the lower courts have rightly held that the reference is not maintainable unless the permission is obtained from the BIFR. In support of his arguments, Mr.Bhatt has relied upon the decision in the case of Kamdar Ladat Samiti of Nanikram Shobraj Mills Ltd. and Asso. Units V/s Nanikram Shobraj Mills Ltd. & Ors. reported in XLVI(1) GLR 166 and it is, therefore, requested to dismiss the present petitions.

#. Heard the learned counsel for the parties.

#. It is not in dispute that the respondent no. 1 mill was declared as sick unit by BIFR. It is also not in dispute that a scheme was sanctioned for the revival of respondent No.1 Mill as per the provisions of the SICA and accordingly, the provisions were made for amalgamation of respondent No.1 mill with respondent No.2 mill and for retrenchment of 659 permanent employees and 301 badli employees. It appears from the record that respondent No.3 Union had entered into the agreements dated 27.7.1990 and 4.11.1995 with regard to retrenchment of workmen and accordingly 659 permanent employees and 301 badli employees were retrenched, out of which majority of the workmen had already been paid compensation as provided for in the sanctioned scheme and only about 71 workmen had not responded even though the company had already sent the compensation cheque as early as on 31.10.1996. It is required to be noted that the BIFR or AAIFR are the expert bodies under the SICA and, therefore, the conclusion of an expert body should not be lightly tinkered with by a court of law without giving due weightage to the conclusion arrived at by such expert body and that there is no procedural irregularity in the decision making process by the BIFR or AAIFR and since the scheme has worked to the satisfaction of the secured, unsecured, statutory creditors and even the workmen, I do not see any reason to interfere with the orders passed by

the BIFR and AAIFR. It is also to be noted here that in a matter requiring technical expertise, the Court would leave the matter for decision for those who are qualified to address the issue and that unless the policy or action is inconsistent with the Constitution and the laws or abuse of the power, the Court will not interfere with such matters. It is also required to be noted that the scheme has been sanctioned and fully implemented and that the company has been discharged from the purview of BIFR. Under the circumstances, I do not find any substance in any of the contentions raised by the learned advocate appearing for the petitioners and resultantly, these petitions fail and are hereby dismissed. Rule discharged with no order as to costs.

(Sharad D.Dave,J)

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